IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 25436 of 2007(C)

EP.107/2005 of SUB COURT, HOSDRUG
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PETITIONER:

P.V.NARAYANAN, AGED 57 YEARS,
S/O.KARICHI AMMA, PAVOOR VEETIL, THAIKADAPURAM,
NELESHWAR VILLAGE.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT:

THE NILESHWAR BLOCK CO-OPERATIVE HOUSING
SOCIETY, NILESHWAR, P.O,NILESHWAR REPRESENTED
BY ITS SECRETARY.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the decree dated 23.6.2005 passed by the Assistant Registrar of Co-operative Societies, Hosdurg in ARC No. 416/2005.

Ext.P2 true copy of EP No.107/2005 on the file of the Subordinate Judge's Court, Hosdurg and typed copy of the order.

Ext.P3 true copy of the counter affidavit filed by the petitioner in the execution petition.

Ext.P4 true copy of the commissioner report.

M.N.Krishnan, J.

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W.P(C).No.25436 of 2007

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Dated this the 15th day of October, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Subordinate Judge's Court, Hosdurg whereby arrest has been ordered of the judgment debtor. On a Perusal of the award passed by the Assistant Registrar of Co-operative Societies, the loan was advanced for the purpose of constructing a house and there has been a mortgage of the property as a security for the discharge of the amount and Ext.P1 award itself shows the schedule of the mortgaged property.

2. Ordinarily when amount is advanced on the basis of mortgage, the method of realisation is by selling the mortgaged property first and if it is insufficient to discharge the decree debt, then proceed personally against the defendant and his other assets for the realisation of the amount. It is true that in the decree the wording is otherwise and there is a direction to receive it personally or by selling the mortgaged property.

3. Therefore, I feel that proper approach would have been to proceed with the mortgaged property for the realisation of the decree debt and in case of insufficiency to proceed personally against the assets of the defendant or personally against him. Therefore, the order under challenge is set aside and the decree holder is permitted to amend the present execution petition by incorporating a prayer for the sale of the mortgaged property with the additional prayer to proceed personally against the defendant and his other assets in case of non-realisation of the entire amount due.

Writ Petition is allowed.

M.N.Krishnan,
Judge.

ess 15/10